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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,484	01/18/2002	Timothy J. Flohe	ALL21 P-300	1416

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EXAMINER

BAHTA, ABRAHAM

ART UNIT	PAPER NUMBER
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1775

DATE MAILED: 12/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/051,484

Applicant(s)

FLOHE, TIMOTHY J.

Examiner

Abraham Bahta

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-10, 14-17 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-10 and 21 is/are rejected.
- 7) ☐ Claim(s) 14-17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## DETAILED ACTION

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CAR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CAR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CAR 3.73(b).

Claims 3-6, 8-10 and 21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over figures 2-12 of U.S. Patent No. D 472,183. Although the conflicting claims are not identical, they are not patentably distinct from each other because the parameters of the ornament design recited in the subject application are encompassed by figures 2-12 of the above identified patent.

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Claims 2 and 7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over figures 2-12 of U.S. Patent No. D 472,183 in view of Yedlin (USP 6,042,903).

Claims 2 and 7 of the subject application require the device to be made of metal sheet; however, Yedlin teaches a three dimensional ornament comprising a plurality of strips which may be spaced apart angularly wherein each strip has a first end and a second end and wherein the first end of each strip is attached to a first spine and the second end of each strip is attached to a second spine. See col. 2, lines 59-64 and Figs.4-7 and 9. The reference teaches the ornament may be made from a sheet of metallic foil. See col. 2, lines 42-45.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the ornament device disclosed in US Patent D 472,183 of a metal sheet so that the sheet of metal may be shaped and adjusted to various sizes of globular or other configurations.

***Allowable Subject Matter***

Claims 14-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is examiner's statement of reasons for allowance: The closest prior art is USP 6,042,903 to Yedlin which teaches a three dimensional ornament comprising a plurality of strips made of a sheet of metal foil and which may be spaced apart angularly wherein each strip

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has a first end and a second end and wherein the first end of each strip is attached to a first spine and the second end of each strip is attached to a second spine. See col. 2, lines 59-64 and Figs. 4-7 and 9.

The reference fails to teach or suggest a process for making a three dimensional decorative device comprising the steps of cutting a sheet into two-dimensional shape and cutting the sheet to form a plurality of elongated strips wherein the strips are bent so that adjacent strips are angularly displaced from a reference plane by a progressively greater angle and approximately the same angle and wherein the major surface of each elongate strip is located in a different plane and the vertical planes of the major surfaces of the elongate strips intersect at a single vertical axis.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Response to Applicant's Arguments/Remarks***

Applicant's arguments with respect to claims 2-10, 14-17 and 21 have been considered but are moot in view of the new ground(s) of rejection.

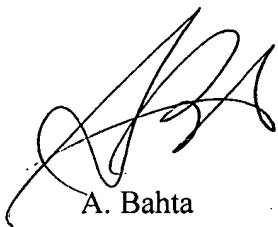
Any inquiry concerning this communication should be directed to Abraham Bahta at telephone number (703) 308-4412. The Examiner can normally be reached Monday-Friday from 11:30 AM -8:00 PM (EST).

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor

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Deborah Jones can be reached on (703) 308-3822. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for after Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.



A. Bahta

11/17/03



DEBORAH JONES  
SUPERVISOR/PROJECT ENGINEER